

**U.S. Department of Labor**

Office of Administrative Law Judges  
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Case No: 2000-BLA-845

In the Matter of

Date: July 16, 2001

LOLA JEAN PRUETT,  
(Widow of RALPH PRUETT)  
Claimant

v.

SEA "B" MINING COMPANY,  
JEWELL RIDGE  
Employer

and

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,  
Party-In-Interest.

**Appearances:**

Lawrence L. Moise, III, Esq.  
For the Claimant

J. Jasen Eige, Esq.  
For the Employer

BEFORE: MOLLIE W. NEAL  
Administrative Law Judge

***DECISION AND ORDER – DENYING BENEFITS***

This case arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1977 (hereinafter referred to as "the Act"), 30 U.S.C. § 901 et seq., and the regulations issued thereunder, located in Title 20 of the Code of Federal Regulations. Regulation section numbers mentioned in this Decision and Order refer to sections of that Title. Benefits are awarded to persons who are totally disabled within the meaning of the Act due to pneumoconiosis, or to survivors of persons who died due to pneumoconiosis. Pneumoconiosis is a chronic dust disease of the lungs

arising from coal mine employment and is commonly known as black lung.

The miner, Ralph D. Pruett, died on November 1, 1998, and his widow, Lola J. Pruett, filed an application for survivor's benefits on December 14, 1998. (DX 1; DX 7)<sup>1</sup> The District Director, Office of Workers' Compensation Programs, following an informal conference, denied the claim. (DX 15; DX 28) The Claimant made a timely request for formal hearing, and the matter was referred to the Office of Administrative Law Judges on May 31, 2000. (DX 31)

Upon due notice, a hearing was held before the undersigned in Abingdon, Virginia on October 19, 2000. At that time, all parties were afforded full opportunity to present evidence and argument as provided in the Act and the regulations issued thereunder, found in Title 20 of the Code of Federal Regulations. Documentary evidence, Director's exhibits 1-32, Claimant's exhibits 1-2, and Employer's exhibit 1 were admitted into the record. (Tr. 8-10) Employer's exhibits 2-3 have also been admitted, which evidence was submitted post-hearing according to a ruling made at the hearing. (Tr. 8-9) The parties were given the opportunity to submit post-hearing briefs on the merits of the case and the Employer submitted a brief on January 3, 2001, which has been considered.

On February 28, 2001, pursuant to the terms of Paragraph 3 of the Preliminary Injunction entered by the United States District Court for the District of Columbia on February 9, 2001,<sup>2</sup> the parties were accorded an opportunity to submit briefs on the issue of whether the amended regulatory provisions at 20 C.F.R. §§ 718.104(d), 718.201(a)(2), 718.201(c), 718.204(a), 718.205(c)(5), or 718.205(d) would affect the outcome of this claim. Briefs have been submitted by the Claimant, the Respondent Employer, and the Director, Office of Worker's Compensation Programs. All parties agree that the amended regulations will not affect the outcome of this case.

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<sup>1</sup> Citations to the record are as follows: "DX" refers to the Director's exhibits; "CX" refers to the Claimant's Exhibits; "EX" refers to the Employer's exhibits, and "Tr." refers to the transcript of the hearing.

<sup>2</sup> The Preliminary Injunction in *National Mining Associates, et al v. Chao*, stays the implementation of many of the amended regulatory provisions. However, with respect to claims pending before the Office of Administrative Law Judges ("OALJ"), the court's order provides that:

All claims for black lung benefits pending before the Department's Office of Administrative Law Judges at the time of this order or which become pending within the period set by the Court for briefing, hearings and decisions on the merits, shall be stayed for the duration of the briefing, hearing and decision schedule set by the Court, except where the adjudicator, after briefing by the parties to the pending claim, determines that the regulations at issue in the instant lawsuit will not affect the outcome of the case. (Emphasis added)

Consistent with my Post Hearing Order of February 28, 2001, and upon consideration of the parties' concessions, I find that the outcome of this case will not be affected by the amended regulations.

The issues presented for adjudication are: (1) whether the miner had pneumoconiosis which arose out of his coal mine employment; and (2) whether the miner's death was due pneumoconiosis.

The following findings and conclusions are based upon my analysis and review of the entire record, arguments of the parties, and applicable statutes, regulations, and case law.

### **Adjudicative Criteria**

Because this claim was filed after March 31, 1980, the effective date of Part 718, it must be adjudicated under those regulations. Under § 718.205(c), applicable to survivors' claims filed after January 1, 1982, a claimant must establish that the miner died due to pneumoconiosis. Claimant will have established death due to pneumoconiosis in any of the following circumstances: (1) where competent medical evidence establishes that the miner's death was due to pneumoconiosis; (2) where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis; or (3) where the presumption set forth at § 718.304 is applicable. Survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition unrelated to pneumoconiosis. 20 C.F.R. § 718.205(c)(4).

An Administrative Law Judge must also make a threshold determination as to the existence of pneumoconiosis under 20 C.F.R. § 718.202(a) prior to considering whether the miner's death was due to the disease under § 718.205. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993)

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Background**

The miner was born on September 4, 1937 and died on November 1, 1998. (DX 1) He married Claimant on January 29, 1957, and Claimant had no dependents at the time her claim was filed. Claimant testified that she was the miner's only dependent when he left the mines. (DX 1; DX 6; Tr. 16)) Claimant has not remarried. (Tr. 12) Claimant stated that her husband would be covered with black coal dust after returning home from work and that the dust would get into his throat and nose and around his eyes. (Tr. 15) He developed breathing problems which bothered him particularly at night, and which gradually worsened. (Tr. 18) In 1997, Mr. Pruett underwent lung surgery to remove a malignant tumor, and eventually became bound to a

wheelchair. He was also placed on oxygen and a ventilator. (Tr. 18-19) Claimant stated that Dr. Claustro was the miner's family physician for about the last 10 years of the miner's life. (Tr. 18) She also stated that she was never aware the miner smoked regularly, but that he may have smoked two or three cigarettes per day with his friends and co-workers. (Tr. 20-21) She added that her husband had quit smoking about 20 years prior to his death.

The parties agree that the miner spent most of his coal mine employment underground in Virginia mines as a motorman, miner helper and shuttle car operator. (DX 2; DX 3; DX 4) Mr. Pruett left the mines and Sea "B" Mining, his only coal mining employer, at the end of 1993. (DX 3; Tr. 17) Further, the parties do not dispute the District Director's finding that Mr. Pruett worked for 13 years, two months and 17 days in qualifying coal mine employment.

### **Summary of Medical Evidence**

#### **1. X-ray Reports and CT Scans**

The record contains 25 readings of nine different x-rays or CT scans of the miner's lungs.<sup>3</sup> (DX 19; DX 22; DX 24-26) These films were taken over a 23-year period, from 1975 to 1998. None of the readings were positive for the existence of pneumoconiosis. I note that all of the readings were by B-readers, board-certified radiologists, or duly-qualified physicians.<sup>4</sup>

#### **2. Pulmonary Function Studies**

Subsection (b)(2)(i) of § 718.204 provides for a finding of total disability where pulmonary function tests demonstrate FEV<sub>1</sub><sup>5</sup> (forced expiratory volume in one second) values less than or equal to the values

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<sup>3</sup> All but two of these 25 readings are accurately and thoroughly summarized in the Employer's Prehearing Report submitted October 3, 2000. The two omitted readings were: 1) a CT scan done on July 18, 1998 and read by Dr. Knight as showing lung cancer; and 2) a rereading of that same CT scan by Dr. Fino, a B-Reader, who found the film negative for evidence of coal workers' pneumoconiosis. (DX 22; DX 25)

<sup>4</sup> A "B-reader" is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successfully completing an examination conducted by or on behalf of the Department of Health and Human Services. See 42 C.F.R. § 37.51(b)(2). Interpretations by a physician who is a B-reader and is certified by the American Board of Radiology may be given greater evidentiary weight than an interpretation by any other reader. See *Woodward v. Director, OWCP*, 991 F.2d 314, 316 n.4 (6th Cir. 1993); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128, 1-131 (1984).

<sup>5</sup> Forced expiratory volume in one second.

specified in Appendix B to Part 718 and such tests reveal FVC (forced expiratory)<sup>6</sup> values or MVV<sup>7</sup> (maximum voluntary ventilation) values equal to or less than the applicable table values. Alternatively, a qualifying FEV<sub>1</sub> reading together with an FEV<sub>1</sub>/FVC ratio of 55% or less may be sufficient to prove a totally disabling respiratory impairment under this subsection of the regulations. § 718.204(b)(2)(i) and Appendix B.

The record contains data from one pulmonary function study, conducted on March 30, 1998, revealing an FEV<sub>1</sub> value of 2.75, an FVC value of 3.41 and an MVV value of 140. (DX 22) These values do not qualify under the applicable regulations.

### 3. Arterial Blood Gas Studies

Subsection 718.204(b)(2)(ii) provides for the establishment of total disability through the results of arterial blood gas tests. Blood gas tests may establish total disability where the results demonstrate a disproportionate ratio of pCO<sub>2</sub> to pO<sub>2</sub>, which indicates the presence of totally disabling impairment in the transfer of oxygen from the claimants' lung alveoli to his blood. § 718.204(b)(2) and Appendix C. The test results must meet or fall below the table values set forth in Appendix C following Part 718 of the regulations.

The single blood gas study of record, conducted March 30, 1998, did not reveal qualifying values under the regulations. (DX 22)

### 4. Medical Reports

The record contains progress notes and lab reports from Dr. M.R. Javed during the period from October 1984 through the time of the miner's death in 1998. (DX 10-11) From 1984 through 1992, Dr. Javed noted no shortness of breath and mentioned that the patient was walking anywhere from two to four miles per day. This doctor described the miner's lungs as clear, with the exception of some cough and congestion in 1986 and 1987 that he treated with antibiotics. Throughout this period, the patient's coronary heart disease and arthritic pain were also noted, but otherwise, the examinations were unremarkable and Dr. Javad found the patient "doing fairly well." In 1992, Dr. Javed noted some weakness and shortness of breath, diagnosing coronary heart disease, chronic obstructive pulmonary disease and asthenia. However, it was noted that the miner's pulmonary function tests were "essentially normal" and in 1994, Mr. Pruett was still walking about two miles per day. In 1995, the doctor reported "no more shortness of breath or chest pain."

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<sup>6</sup> Forced vital capacity.

<sup>7</sup> Maximum voluntary ventilation.

This physician, again, noted no shortness of breath in 1997 and in his final notes, he mentioned the miner's "prolonged hospitalization" after carcinoma of the lung and chronic leukemia were diagnosed.

Dr. Ludgerio Z. Claustro completed progress notes in 1993 and 1998. (DX 22) These office notes mention carcinoma of the lung, colon spasms, muscle strains, muscle and joint pain, and anxiety. In September of 1998, Dr. Claustro completed a discharge summary when Mr. Pruett was discharged from a rehabilitation unit after his stay there for extensive physical therapy. Dr. Claustro reported the following conditions at that time: 1) chronic myelogenous leukemia; 2) status post thoracotomy and lobectomy for carcinoma of the lungs, upper lobe; 3) chronic obstructive pulmonary disease; 4) malnutrition, with protein calorie loss; 5) hypothyroidism; 6) benign prostatic hypertrophy; 7) coronary artery sclerosis, with native coronary artery vessel; 8) status post tracheostomy; and 9) care involving rehabilitation procedure. In this report, the doctor mentioned no disease related to the miner's past coal mine employment. The record shows that Dr. Claustro is certified in Family Practice. (CX 2)

On June 4, 1998, Dr. William R. Kincaid examined the miner during the patient's hospitalization and reported the following conditions: 1) chronic myelogenous leukemia; 2) lung cancer; 3) arteriosclerotic heart disease with angina; 4) hypercholesterolemia; 5) hypertension; and 6) depression.

Several other medical reports in June of 1998 relate to the miner's lung cancer and the operation removing the malignant areas found in this left lung. (DX 19) None of these reports mention the existence of coal workers' pneumoconiosis or associated findings of black lung disease, including reports by Drs. King, Clapp, Whitson and Morgan. Drs. McCoskey and Cole, apparently responsible for the miner's ventilatory management and respiratory care during this period, reported his lobectomy and noted that his respiratory failure was secondary to "right lung infiltrate, most likely pneumonia although ARDS [adult respiratory distress syndrome] is still a possibility." Dr. Whitson, in his pathology report describing the removed portion of the miner's lung, found "adenocarcinoma," but did not mention pneumoconiosis or black lung.

In a hospitalization discharge summary dated August 10, 1998, Dr. Trey Robertson listed the following diagnoses: 1) lung cancer; 2) chronic myelogenous leukemia; 3) coronary artery disease; 4) hypercholesterolemia; and 5) hypertension. (DX 19) In 1998, other conditions were mentioned, such as gastrointestinal problems and some fever, but no other conditions were related to the miner's past coal mining history.

The death certificate, completed by Dr. Claustro, lists the immediate cause of death as "acute cardio-respiratory failure due to possible acute myocardial infarction." (DX 7) Underlying causes included coronary artery

stenosis due to arteriosclerosis and idiopathic thrombocytosis. Dr. Claustro also listed, as other significant conditions "adenocarcinoma of the lungs with metastasis," and "coal workers pneumoconiosis."

On November 3, 1998, Dr. Sherif Shoukry conducted an autopsy report. (DX 8) Dr. Shoukry's microscopic description of the lungs included the following statement:

The sections of the upper, middle and lower lobes of the right lung and the sections of the left lower lobe show emphysematous changes of the proximal acinar type characteristic of coal workers' pneumoconiosis. The bronchioles adjacent to the emphysematous changes and in other sporadic locations show few small collections of pigment-laden macrophages forming dust macules. In addition, many of the alveolar spaces show intraluminal collection of dust-laden macrophages.

Dr. Shoukry's final diagnosis was coal workers' pneumoconiosis and history of carcinoma.

Dr. Richard L. Naeye, who is the Chairman of the Pathology Department at Pennsylvania State University College of Medicine, reviewed the autopsy report and accompanying slides, completing a consulting report surrounding these medical records on May 8, 1999. (DX 9) Dr. Naeye's concluded that coal workers' pneumoconiosis was absent, because he found "only a tiny amount of black pigment" and "no tiny birefringent crystals, fibrous tissue or focal emphysema associated with it." This pathologist explained that since coal workers' pneumoconiosis was absent, the disease could not have prevented the miner from performing hard physical work and could not have shortened his life. Dr. Naeye's opinion was that Mr. Pruett "would have died at the same time and in the same way if he had never worked in a coal industry."

In October of 1999, Dr. P. Raphael Caffrey, who is a also board-certified anatomical and clinical pathologist, reviewed all medical evidence of record to that date and completed a consulting report based on that information. (DX 21) It was Dr. Caffrey's opinion that the patient did not suffer from coal workers' pneumoconiosis or any other occupational pneumoconiosis because he found "only a mild to minimal amount of anthracotic pigment" in the autopsy and pathology slides and explained that there were "definitely no macules identified and no evidence of complicated pneumoconiosis." Dr. Caffrey described the cause death as being diffuse alveolar damage, with an unknown etiology. It was this physician's opinion that Mr. Pruett "definitely did not have coal workers' pneumoconiosis" and "the fact that he was a coal miner did not cause or contribute to his death."

Dr. Joseph F. Tomashefski, also a board-certified pathologist, completed a consulting report on October 26, 1999, based on all medical

evidence obtained through that date, including the pathology and autopsy evidence. (DX 21) Dr. Tomashefski's findings as to the resected malignant portion of the lung included a "small amount of lung tissue surrounding the tumor" that demonstrated "non-specific interstitial fibrosis." He reported "minimal black pigment deposition, and no coal macules or silicotic nodules...." Upon review of the autopsy slides, Dr. Tomashefski noted that "[t]here is minimal black pigment, but neither coal macules nor silicotic nodules are identified." It was this pathologist's opinion that, based on the absence of coal macules, the miner did not have coal workers' pneumoconiosis and that the pattern of fibrosis in the miner's lungs at autopsy did not reveal either pneumoconiosis or massive progressive fibrosis. Since he found no coal workers' pneumoconiosis, it was also his opinion that this disease did not cause any respiratory impairment and did not contribute in any way to the miner's death.

In January of 2000, another board-certified pathologist, Dr. Erika C. Crouch completed a consulting report based on her review of the autopsy report and slides, along with the lung tissue from the open biopsy. (DX 27) This specialist concluded that the slides showed no evidence of coal workers' pneumoconiosis or silicosis. She found no coal dust macules, micronodules, nodules, or larger complicated lesions. She explained that the "observed fibrosis" was due to diffuse alveolar damage, but not secondary to coal dust inhalation. She disagreed with the original pathologist's findings of "a few coal dust macules." In conclusion, Dr. Crouch believed that Mr. Pruett's coal dust exposure could not have caused any clinically significant respiratory impairment and did not cause or hasten the patient's death.

On August 8, 2000 Dr. Claustro wrote a one-sentence letter "To Whom It May Concern," stating the following: "This is to certify that Mr. Ralph Pruett suffered from black lung disease, which was a contributing factor and could have hastened the progression of disease and, finally, death." (CX 1)

Dr. Caffrey completed a supplemental report on November 16, 2000 after reviewing Dr. Claustro's notes and August 2000 letter. (EX 2) Dr. Caffrey noted Dr. Claustro's omission of any diagnosis of pneumoconiosis in any of Dr. Claustro's progress notes or examination reports during the miner's lifetime. This pathologist then repeated his opinion that no relationship existed between the diseases that caused Mr. Pruett's death and his occupation as a coal miner. Dr. Caffrey unequivocally stated that the miner did not have coal workers' pneumoconiosis and that his work in the coal mines did not cause, contribute to or play any role in his death.

Dr. Naeye also completed a supplemental report after reviewing Dr. Claustro's notes and letter. (EX 3) Dr. Naeye noted that the autopsy report did not mention or list any damage to the lungs due to coal workers' pneumoconiosis, which this physician believes is required for a diagnosis of black lung. He also emphasized that no other disease or abnormality found



on autopsy was related to coal mining. Thus, Dr. Naeye concluded that pneumoconiosis did not exist and could not have contributed to the miner's death.

#### Other Evidence

The Employer submitted a copy of an opinion by the Virginia Workers' Compensation Commission dated May 16, 2000 affirming a Deputy Commissioner's decision denying the miner's claim for benefits. (EX 1) The Commission specifically found that Mr. Pruett had not established he had contracted a compensable level of coal workers' pneumoconiosis.

### DISCUSSION

#### **Death Due to Pneumoconiosis**

To be entitled to benefits, Claimant must establish that: 1) the miner's death was due to pneumoconiosis; 2) pneumoconiosis was a substantially contributing cause or factor leading to the miner's death; or (3) that § 718.304 is applicable. The presumption at § 718.304 is not applicable to this claim since the medical criteria for complicated pneumoconiosis was not shown in this case. Survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition unrelated to pneumoconiosis. 20 C.F.R. § 718.205(c)(4).

Like several other federal circuits, the United States Court of Appeals for the Fourth Circuit<sup>8</sup> has interpreted "substantially contributing cause" to include a hastening of the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 980 (4th Cir. 1992). See *Griffith v. Director, OWCP*, 49 F.3d 184, 186 (6th Cir. 1995); *Peabody Coal Co. v. Director, OWCP*, 972 F.2d 178, 183 (7th Cir. 1992); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001 (3d Cir. 1989). This interpretation means that any acceleration of the miner's death that is attributable to pneumoconiosis will entitle the claimant to benefits. See *Griffith*, 49 F.3d at 186.

#### **Pneumoconiosis**

Section 718.202(a) sets forth four methods by which a claimant may establish the existence of pneumoconiosis. Under § 718.202(a)(1), a chest x-ray conducted and classified in accordance with § 718.102 may form the basis for a finding of the existence of pneumoconiosis. A biopsy or autopsy conducted and reported in compliance with § 718.106 may also be the basis for finding the existence of pneumoconiosis. 20 C.F.R. § 718.202(a)(2).

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<sup>8</sup> Because all of Mr. Pruett's qualifying coal mine employment took place in Virginia, the law of the Fourth Circuit applies to this claim.

All of the x-ray interpretations, most of which were provided by B-readers and board-certified radiologists, are negative for pneumoconiosis. Therefore, this evidence does not support a finding of the disease under § 718.202(a)(1).

A biopsy or autopsy conducted and reported in compliance with § 718.106 may also be the basis for finding the existence of pneumoconiosis. 20 C.F.R. § 718.202(a)(2). The surgeon who performed the lung resection and the pathologist who initially reviewed the resected tissue made no mention of pneumoconiosis or any disease related to coal mining. Dr. Shoukry, who performed the autopsy, diagnosed pneumoconiosis based on his finding of "a few dust macules" and emphysematous changes of the proximal acinar type characteristic of coal workers' pneumoconiosis." However, four board-certified pathologists who reviewed the biopsy slides, the autopsy slides and all accompanying reports, did not find evidence of coal workers' pneumoconiosis or any other lung disease that may have related to the miner's coal mining employment. I assign great probative weight to the opinions of Drs. Naeye, Caffrey, Tomashefski, and Crouch, as the record shows these doctors are board-certified in anatomical and clinical pathology. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993); *Burns v. Director, OWCP*, 14 BLR 1-2 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985). Moreover, the reports from these specialists deserve significant probative weight as reasoned medical opinions. See *McClendon v. Drummond Coal Co.*, 12 BLR 2-108 (11<sup>th</sup> Cir. 1988). Thus, I find that the weight of this biopsy and autopsy evidence does not establish the existence of pneumoconiosis pursuant to § 718.202(a)(2).

Section 718.202(a)(3) provides that it shall be presumed a miner is suffering from pneumoconiosis if the presumptions described in §§ 718.304, 718.305 or 718.306 are applicable. No x-ray evidence of complicated pneumoconiosis is present in the record and thus, § 718.304 is inapplicable. Section 718.305 does not apply because it pertains only to claims that were filed before January 1, 1982. Further, § 718.306 is not relevant because it is only applicable to survivors' claims filed prior to June 30, 1982.

The fourth and final way to establish the existence of pneumoconiosis is set forth in § 718.202(a)(4). This subsection provides for such a finding where a physician, exercising sound medical judgment, notwithstanding a negative x-ray, finds that a miner suffers from pneumoconiosis. Any such finding shall be based upon objective medical evidence and shall be supported by a reasoned medical opinion. A reasoned opinion is one which contains underlying documentation adequate to support the physician's conclusions. See *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). Proper documentation exists where the physician sets forth the clinical findings, observations, facts, and other data on which the diagnosis is based. *Id.* A brief and conclusory medical report which lacks

supporting evidence may be discredited. See *Locostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see also *Mosely v. Peabody Coal Co.*, 769 F.2d 357 (6<sup>th</sup> Cir. 1985). A medical report may be rejected as unreasoned where the physician fails to explain how his findings support his diagnosis. See *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985).

An overwhelming majority of the most qualified physicians of record found that the miner did not suffer from pneumoconiosis, including Drs. Naeye, Caffrey, Tomashefski and Crouch. Dr. Javed, who the record shows examined and treated Mr. Pruett for over 14 years, never mentioned the existence of pneumoconiosis or any disease relating to his past coal dust exposure. I find it significant that a physician so familiar with a patient's condition would not mention the existence of pneumoconiosis in any of his progress notes over such a long time period. Likewise, none of the physicians who treated Mr. Pruett for his lung cancer ever listed pneumoconiosis in their examination or hospitalization reports, including Drs. Kincaid, Clapp, Whitson, Morgan, McCoskey, Cole, and Robertson. Only Dr. Claustro diagnosed the existence of coal workers' pneumoconiosis and did so only after the miner's death, in a one-sentence letter without basis or explanation. I assign less probative weight to Dr. Claustro's August 2000 letter, as unsupported and unreasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc). Although Dr. Shoukry diagnosed pneumoconiosis upon autopsy, I find this diagnosis is outweighed by the reviewing pathologists' reports, for the same reasons stated above.

In conclusion, I find that the evidence does not support a finding that the miner suffered from pneumoconiosis under § 718.202(a)(4).

The opinion by the Virginia Workers' Compensation Commission denying the miner benefits is relevant, but is not binding in determining whether Claimant is entitled to federal black lung benefits. *Schegan v. Waster Management & Processors, Inc.*, 19 BLR 1-41 (1994); *Miles v. Central Appalachian Coal Co.*, 7 BLR 1-744 (1985). Nevertheless, it is consistent with my conclusion that Claimant has failed to prove the miner suffered from pneumoconiosis.

Because Claimant has established that the miner has over ten years of qualifying coal mine employment, she would have been entitled to a rebuttable presumption that his pneumoconiosis arose from coal mine employment had she been able to prove the existence of pneumoconiosis. See 20 C.F.R. § 718.203(b).

Even if she could have established pneumoconiosis, Claimant must still show that the miner's death was due to pneumoconiosis, as defined under the regulations and by the Fourth Circuit. Of the physicians who addressed this issue, only Dr. Claustro believed that the miner's death was related to his black lung disease, as stated on the death certificate and in

his brief letter written two years after the miner's death. As stated, above, this physician provided no basis for his opinion that the miner suffered from pneumoconiosis, either in his subsequent letter, or by reference to any of his progress notes generated during the miner's lifetime. Thus, I assign little probative weight to Dr. Claustro's opinion on this causation issue.

The remaining reporting physicians who reviewed the medical evidence concluded that the miner's death was in no way related to his past exposure to coal dust and that pneumoconiosis did not cause or hasten his death. These physicians include the four board-certified pathologists, Drs. Crouch, Tomashefski, Caffrey and Naeye. Again, I assign the greatest probative weight to these reports because they are well-reasoned and because of the expertise of their authors.

Because the weight of the medical evidence does not show that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that his death was hastened by the disease, I find that Claimant has not met her burden of showing that his death was due to pneumoconiosis.

Since Claimant has not proven the existence of pneumoconiosis or that the miner's death was due to pneumoconiosis, pursuant to § 718.205(c), I find that she is not entitled to benefits under the Act.

#### **Attorney's Fees**

The award of attorney's fees under the Act is permitted only in cases in which a claimant is found to be entitled to benefits. Since benefits are not awarded in this case, the Act prohibits the charging of any fee to Claimant for representation services rendered to Claimant in pursuit of this claim.

#### **ORDER**

The claim of Lola Jean Pruett for benefits under the Act is hereby **DENIED**.

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MOLLIE W. NEAL  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS**

Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within 30 (thirty) days from the date of this decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington, D.C. 20013-7601. A copy of this Notice of Appeal must also be served on Donald S. Shire, Esquire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C. 20210.